

**\*E-Filed: June 5, 2014\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

No. CR13-00527-2 EJD (HRL)

Plaintiff,

**ORDER GRANTING  
GOVERNMENT'S MOTION FOR  
PROTECTIVE ORDER**

v.

MARCO FERNANDEZ,

**[Re: Docket No. 41]**

Defendant.

Defendant Marco Fernandez and his brother were arrested by Watsonville police officers following a traffic stop during which the officers found methamphetamine. The Watsonville Police Department referred the case for federal prosecution by way of the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"). The parties now dispute whether the government must produce materials in possession of local law enforcement, namely audio and video footage of the traffic stop and arrest in the possession of the Watsonville Police Department. The government now moves for a protective order against production of such materials not in its possession in anticipation of Defendant's forthcoming motion to compel.

Federal Rule of Criminal Procedure 16(a) sets forth the government's disclosure obligations, including that "[u]pon a defendant's request, the government must disclose to the defendant . . . (i) any relevant written or recorded statement by the defendant if: the statement is within the government's possession, custody or control; and that attorney for the government knows—or through due diligence could know—that the statement exists." Fed. R. Crim. P. 16(a)(1)(B). "The

1 prosecutor will be deemed to have knowledge of and access to anything in the possession, custody  
2 or control of any federal agency participating in the same investigation of the defendant.” *U.S. v.*  
3 *Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989). However, there is a “consistent Ninth Circuit rule that  
4 federal prosecutors are never deemed to have access to material held by state agencies.” *U.S. v.*  
5 *Santiago*, 46 F.3d 885, 894 (9th Cir. 1995). Moreover, “the federal government [has] no duty to  
6 obtain from state officials documents of which it [is] aware but over which it [has] no actual  
7 control.” *U.S. v. Chavez-Vernaza*, 844 F.2d 1368, 1375 (9th Cir. 1987)

8 The government has represented that neither the U.S. Attorney’s Office nor the ATF has the  
9 requested audio and video footage. To the extent such materials exist, they are in the exclusive  
10 possession of the Watsonville Police Department. Thus, the materials are not in “government’s  
11 possession, custody, or control” and the government has no obligation to obtain them from local law  
12 enforcement. Accordingly, the government has no obligation under Rule 16 to produce the material,  
13 and its motion for protective order is granted. *See* Fed. R. Crim. P. 16(d)(1) (“[T]he court may, for  
14 good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.”).

15 **IT IS SO ORDERED.**

16 Dated: June 5, 2014

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19 HOWARD R. LLOYD  
20 UNITED STATES MAGISTRATE JUDGE  
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5 **Counsel are responsible for distributing copies of this document to co-counsel who have not**  
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